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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL TERPIN,

Plaintiff,

v.

AT&T MOBILITY LLC; and DOES 1-
25,

Defendants.

Case No. 2:18-cv-06975-ODW-KS

**DEFENDANT AT&T MOBILITY
LLC'S EVIDENTIARY OBJECTIONS
TO PLAINTIFF'S ADDITIONAL
FACTS IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
SUMMARY JUDGMENT**

**REDACTED PORTIONS FILED
UNDER SEAL PURSUANT TO THE
COURT'S FEBRUARY 24, 2023
ORDER [DKT 218]**

*[Reply ISO Motion for Summary Judgment
and Response to Plaintiff's Additional
Facts lodged concurrently herewith]*

Hearing Date: February 27, 2023

Time: 1:30 p.m.

Pretrial Conference: April 10, 2023

Trial: May 2, 2023

Judge: Hon. Otis D. Wright II

Pursuant to Federal Rule of Civil Procedure 56, Local Rules 56-1 and 56-2, and the Scheduling Order for this case (Dkt. 53), Defendant AT&T Mobility LLC (“AT&T”) hereby submits the following evidentiary objections to the additional facts set forth in Plaintiff Michael Terpin’s Statement of Genuine Disputes of Material Facts (and Conclusions of Law) in Opposition to AT&T’s Motion for Summary Judgment (Dkt. 186-6).

I. EVIDENTIARY OBJECTIONS TO ADDITIONAL PLAINTIFF’S FACTS

Additional Fact No. 1: Objection to the purported fact on the grounds that it is a legal conclusion as to AT&T falling within the category of “common carrier” and as to its obligations under the FCA—not a fact. Fed. R. Evid. 401, 402. Accordingly, the purported fact is also argument and improper opinion evidence. Fed. R. Evid. 701, 702.

Additional Fact No. 2: Objection to the purported fact on the grounds that it is a legal conclusion as it states the legal requirements set forth in section 222 of the FCA—not a fact. Fed. R. Evid. 401, 402. Accordingly, the purported fact is argument and improper opinion evidence. Fed. R. Evid. 701, 702.

Additional Fact No. 3: Objection to the purported fact on the grounds that it is a legal conclusion stating the FCC’s interpretation of section 222 of the FCA—not a fact. Fed. R. Evid. 401, 402.

Additional Fact No. 4: Objection to the purported fact on the grounds that it is a legal conclusion as it states requirements that apply to AT&T under section 222 of the FCA—not a fact. Fed. R. Evid. 401, 402. Accordingly, the purported fact is argument and improper opinion evidence. Fed. R. Evid. 701, 702.

Additional Fact No. 5: Objection as the purported fact is a legal conclusion regarding the meaning of “proprietary information” as that term is used in section 222 of the

1 FCA—not a fact. Fed. R. Evid. 401, 402. Accordingly, the purported fact is argument
2 and improper opinion evidence. Fed. R. Evid. 701, 702.

3 **Additional Fact No. 6:** Objection as the purported fact is a legal conclusion interpreting
4 the type of information protected by section 222 of the FCA—not a fact. Fed. R. Evid.
5 401, 402. Accordingly, the purported fact is argument and improper opinion evidence.
6 Fed. R. Evid. 701, 702.

7
8 **Additional Fact No. 7:** Objection as the purported fact is a legal conclusion interpreting
9 the FCC's Pretexting Order—not a fact. Fed. R. Evid. 401, 402. Accordingly, the
10 purported fact is argument and improper opinion evidence. Fed. R. Evid. 701, 702.

11 Objection to Exhibit 45 on the grounds that the cited paragraphs are irrelevant to the
12 issues set forth in AT&T's Motion for Summary Judgment. To the extent Terpin
13 contends providing examples of protections that the FCC has required is relevant to
14 whether risks relating to improper authentication were foreseeable, that issue has no
15 bearing on the legal question of whether AT&T's conduct was the proximate cause of
16 Terpin's harm. Fed. R. Evid. 402.

17
18 **Additional Fact No. 8:** Objection to Exhibit 43 on the grounds that the FCC's 2015 fine
19 imposed against AT&T under the Consent Decree is not relevant to the arguments set
20 forth in AT&T's Motion for Summary Judgment in that this fine does not have a
21 tendency to disprove those arguments. Fed. R. Evid. 401, 402. The AT&T Consent
22 Decree as a whole is irrelevant to the issues set forth in AT&T's Motion for Summary
23 judgment in that, among other things, it did not involve SIM swaps or cryptocurrency
24 theft. Fed. R. Evid. 401, 402.

25 **Additional Fact No. 9:** Objection to Exhibit 43 on the grounds that the manner in which
26 the AT&T Consent Decree arose is not relevant to the arguments set forth in AT&T's
27 Motion for Summary Judgment in that this fine does not have a tendency to disprove
28

1 those arguments. Fed. R. Evid. 401, 402. To the extent that the AT&T Consent Decree
2 is being used to suggest that AT&T had notice of risks from the release of confidential
3 customer information, whether the risks were foreseeable does not have a tendency to
4 disprove the arguments set forth in AT&T's Motion for Summary Judgment. Fed. R.
5 Evid. 401, 402.

6 **Additional Fact No. 10:** Objection to Exhibit 43 on the grounds that AT&T's
7 obligations under the AT&T Consent Decree are not relevant to the issues raised in
8 AT&T's Motion for Summary Judgment as that Motion does not address the
9 reasonableness of AT&T's security measures or whether AT&T met the relevant
10 standard of care. Fed. R. Evid. 401, 402.

11
12 **Additional Fact No. 11:** Objection as the purported fact is a legal conclusion as to what
13 AT&T was required to do under the Consent Decree—not a fact. Fed. R. Evid. 401, 402.
14 Accordingly, the purported fact is argument and improper opinion evidence. Fed. R.
15 Evid. 701, 702.

16 Objection to Exhibit 43 on the grounds that AT&T's obligations under the AT&T
17 Consent Decree are not relevant to the issues raised in AT&T's Motion for Summary
18 Judgment in that, among other things, that Motion does not address the reasonableness
19 of AT&T's security measures or whether AT&T met the relevant standard of care. Fed.
20 R. Evid. 401, 402.

21
22 **Additional Fact No. 12:** Objection to the purported fact on the grounds that it is a legal
23 conclusion as to what "[t]he FCC required" from AT&T under the Consent Decree—
24 not a fact. Fed. R. Evid. 401, 402, 701, 702.

25 Objection to Exhibit 43 on the grounds that AT&T's obligations under the AT&T
26 Consent Decree are not relevant to the issues raised in AT&T's Motion for Summary
27 Judgment in that, among other things, that Motion does not address the reasonableness
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1 of AT&T's security measures or whether AT&T met the relevant standard of care. Fed.
2 R. Evid. 401, 402.

3 **Additional Fact No. 13:** Objection to the purported fact on the grounds that it is a legal
4 conclusion as to what "[t]he FCC required" from AT&T under the AT&T Consent
5 Decree—not a fact. Fed. R. Evid. 401, 402 701, 702.
6

7 Objection to Exhibit 43 on the grounds that AT&T's obligations under the AT&T
8 Consent Decree are not relevant to the issues raised in AT&T's Motion for Summary
9 Judgment in that, among other things, that Motion does not address the reasonableness
10 of AT&T's security measures or whether AT&T met the relevant standard of care. Fed.
11 R. Evid. 401, 402.

12 **Additional Fact No. 14:** Objection to the purported fact on the grounds that it is a legal
13 conclusion as to what "[t]he FCC required" from AT&T under the AT&T Consent
14 Decree—not a fact. Fed. R. Evid. 401, 402, 701, 702.
15

16 Objection to Exhibit 43 on the grounds that AT&T's obligations under the AT&T
17 Consent Decree are not relevant to the issues raised in AT&T's Motion for Summary
18 Judgment in that, among other things, that Motion does not address the reasonableness
19 of AT&T's security measures or whether AT&T met the relevant standard of care. Fed.
20 R. Evid. 401, 402.

21 **Additional Fact No. 17:** Objection to the purported fact on the grounds that it is a legal
22 conclusion that the quoted behavior violates section 222 of the FCA—not a fact. Fed. R.
23 Evid. 401, 402, 701, 702.
24

25 Objection to Exhibit 48 on the grounds that it contains legal conclusions regarding the
26 interpretation and scope of section 222 of the FCA. A notice of proposed rulemaking
27 does not have the force or effect of law. Fed. R. Evid. 401, 402.
28

1 **Additional Fact No. 18:** Objection to the purported fact on the grounds that it is a legal
2 conclusion regarding that CPNI could be transferred or disclosed in a SIM swap and
3 what meets the legal definition of CPNI—not a fact. Fed. R. Evid. 401, 402.
4 Accordingly, the purported fact is argument and improper opinion evidence. Fed. R.
5 Evid. 401, 402, 701, 702. And because the purported fact does not accurately reflect
6 those statements made in the cited evidence, it lacks adequate foundation. Fed. R. Evid.
7 602.

8 Objection to the NPR (Exhibit 48) on the grounds that it is hearsay as it is an out-of-
9 court statement being used for the truth of the matter asserted—i.e., that various forms
10 of CPNI can be turned over by virtue of a SIM swap. Fed. R. Evid. 802. To the extent
11 that Plaintiff suggests that it is excluded from the hearsay rule as a public record, the
12 NPR does not meet the criteria of Fed. R. Evid. 803(8)(A).

13
14 **Additional Fact No. 19:** Objection to the purported fact on the grounds that it is a legal
15 conclusion regarding what constitutes a legally enforceable promise in the Privacy
16 Policy and COBC—not a fact. Fed. R. Evid. 401, 402. Accordingly, the purported fact
17 is argument and improper opinion evidence. Fed. R. Evid. 701, 702.

18 **Additional Fact No. 20:** Objection to the purported fact on the grounds that it is a legal
19 conclusion as to what legal obligations AT&T had in 2017 and 2018—not a fact. Fed.
20 R. Evid. 401, 402. Accordingly, the purported fact is argument and improper opinion
21 evidence. Fed. R. Evid. 701, 702.

22
23 Objection to Exhibit 43 on the grounds that AT&T's obligations under the AT&T
24 Consent Decree are not relevant to the issues raised in AT&T's Motion for Summary
25 Judgment as that Motion does not address the reasonableness of AT&T's security
26 measures or whether AT&T met the relevant standard of care. Fed. R. Evid. 401, 402.

1 **Additional Fact No. 22:** Objection to the purported fact on the grounds that it is a legal
2 conclusion as to what commitments AT&T made in the Privacy Policy—not a fact. Fed.
3 R. Evid. 401, 402. Accordingly, the purported fact is argument and improper opinion
4 evidence. Fed. R. Evid. 701, 702.

5 **Additional Fact No. 23:** Objection to Exhibit 41 on the grounds that Terpin's own
6 interrogatory responses are inadmissible hearsay. Fed. R. Evid. 802; *AT & T Corp. v.*
7 *Dataway Inc.*, 577 F. Supp. 2d 1099, 1109 (N.D. Cal. 2008).
8

9 **Additional Fact No. 24:** Objection to the purported fact on the grounds that it is a legal
10 conclusion regarding what constitutes a legally enforceable promise in the COBC—not
11 a fact. Fed. R. Evid. 401, 402. Accordingly, the purported fact is argument and improper
12 opinion evidence. Fed. R. Evid. 701, 702.

13 Objection to Exhibit 41 on the grounds that Terpin's own interrogatory responses are
14 inadmissible hearsay. Fed. R. Evid. 802; *AT & T Corp. v. Dataway Inc.*, 577 F. Supp.
15 2d 1099, 1109 (N.D. Cal. 2008). Additionally, the cited responses contain argument and
16 improper legal conclusions—not facts. Fed. R. Evid. 401, 402, 701, 702.
17

18 **Additional Fact No. 25:** Objection to the purported fact on the grounds that it is a legal
19 conclusion regarding what constitutes a legally enforceable promise in the COBC—not
20 a fact. Fed. R. Evid. 401, 402. Accordingly, the purported fact is argument and improper
21 opinion evidence. Fed. R. Evid. 701, 702.

22 Objection to Exhibit 41 on the grounds that Terpin's own interrogatory responses are
23 inadmissible hearsay. Fed. R. Evid. 802; *AT & T Corp. v. Dataway Inc.*, 577 F. Supp.
24 2d 1099, 1109 (N.D. Cal. 2008). Additionally, the cited responses contain argument and
25 improper legal conclusions—not facts. Fed. R. Evid. 401, 402, 701, 702.
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1 **Additional Fact No. 27:** Objection to Exhibit 21 at 3750, 374-57 on the grounds that it
2 contains inadmissible hearsay. Specifically, the account records reflect that Terpin
3 informed AT&T that [REDACTED]
4 [REDACTED] which are out-of-court statements used for the truth of the matter
5 asserted. Fed. R. Evid. 802.

6 **Additional Fact No. 30:** Objection to Exhibit 41 on the grounds that Terpin's own
7 interrogatory responses are inadmissible hearsay. Fed. R. Evid. 802; *AT & T Corp. v.*
8 *Dataway Inc.*, 577 F. Supp. 2d 1099, 1109 (N.D. Cal. 2008). Additionally, the cited
9 portions include opinions regarding the cause of the June 11, 2017, which is a legal
10 conclusion and improper opinion. Fed. R. Evid. 401, 402, 701, and 702. Further, because
11 the June 11, 2017 SIM swap is not part of Terpin's claims in this action, any evidence
12 as to its cause is irrelevant. Fed. R. Evid. 401, 402.

13 **Additional Fact No. 31:** Objection to Exhibit 41, to the extent it is relied on, on the
14 grounds that Terpin's own interrogatory responses are inadmissible hearsay. Fed. R.
15 Evid. 802; *AT & T Corp. v. Dataway Inc.*, 577 F. Supp. 2d 1099, 1109 (N.D. Cal. 2008).
16 In addition to the responses themselves, any purported statements made by an alleged
17 employee to Terpin are inadmissible hearsay as there is no indication as to whether the
18 employee was an AT&T employee or otherwise authorized to speak on AT&T's behalf.
19 Fed. R. Evid. 801. Additionally, the cited portions include opinions regarding what
20 AT&T purportedly promised, which is a legal conclusion and improper opinion. Fed. R.
21 Evid. 401, 402, 701, and 702. Further, Terpin has not provided adequate foundation for
22 the statements made in Exhibit 41 as to what the "extra security" would or would not
23 protect. Fed. R. Evid. 602.

24 **Additional Fact No. 32:** Objection to Exhibit 41 on the grounds that Terpin's own
25 interrogatory responses are inadmissible hearsay. Fed. R. Evid. 802; *AT & T Corp. v.*
26 *Dataway Inc.*, 577 F. Supp. 2d 1099, 1109 (N.D. Cal. 2008).
27
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1 **Additional Fact No. 33:** Objection to Exhibit 41 on the grounds that Terpin’s own
 2 interrogatory responses are inadmissible hearsay. Fed. R. Evid. 802; *AT & T Corp. v.*
 3 *Dataway Inc.*, 577 F. Supp. 2d 1099, 1109 (N.D. Cal. 2008). In addition to the responses
 4 themselves, the assertion contained therein that Terpin “informed AT&T that he had
 5 los[t] cryptocurrency” is inadmissible hearsay. Fed. R. Evid. 802.

6 **Additional Fact No. 34:** Objection to Exhibit 41 on the grounds that Terpin’s own
 7 interrogatory responses are inadmissible hearsay. Fed. R. Evid. 802; *AT & T Corp. v.*
 8 *Dataway Inc.*, 577 F. Supp. 2d 1099, 1109 (N.D. Cal. 2008). In addition to the responses
 9 themselves, any purported statements made by an alleged employee to Terpin are
 10 inadmissible hearsay as there is no indication as to whether the employee was an AT&T
 11 employee or otherwise authorized to speak on AT&T’s behalf. Fed. R. Evid. 801, 802.

12 **Additional Fact No. 35:** Objection to Exhibit 41 on the grounds that Terpin’s own
 13 interrogatory responses are inadmissible hearsay. Fed. R. Evid. 802; *AT & T Corp. v.*
 14 *Dataway Inc.*, 577 F. Supp. 2d 1099, 1109 (N.D. Cal. 2008). In addition to the responses
 15 themselves, any purported statements made by an alleged employee to Terpin are
 16 inadmissible hearsay as there is no indication as to whether the employee was an AT&T
 17 employee or otherwise authorized to speak on AT&T’s behalf. Fed. R. Evid. 801.

18 **Additional Fact No. 41:** Objection to Exhibit 41 on the grounds that Terpin’s own
 19 interrogatory responses are inadmissible hearsay. Fed. R. Evid. 802; *AT & T Corp. v.*
 20 *Dataway Inc.*, 577 F. Supp. 2d 1099, 1109 (N.D. Cal. 2008). In addition to the responses
 21 themselves, any purported statements made by an alleged employee to Terpin are
 22 inadmissible hearsay as there is no indication as to whether the employee was an AT&T
 23 employee or otherwise authorized to speak on AT&T’s behalf. Fed. R. Evid. 801, 802.
 24 Further, the assertion that AT&T made legally enforceable “promises” is a legal
 25 conclusion—not a fact—and is argument and improper opinion. Fed. R. Evid. 401, 402,
 26 701,702.
 27
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1 Objection to Terpin Declaration ¶¶ 2-3 on the grounds that any purported statements
2 made by an employee to Terpin are inadmissible hearsay as there is no indication as to
3 whether the employee was an AT&T employee or otherwise authorized to speak on
4 AT&T's behalf. Fed. R. Evid. 801, 802. Further, the assertion that AT&T made legally
5 enforceable "promises" is a legal conclusion and argument—not a fact—and is an
6 improper opinion. Fed. R. Evid. 401, 402, 701,702.

7
8 **Additional Fact No. 42:** Objection to the purported fact on the grounds that it is
9 argument, not a fact of consequence in determining the issues set forth in AT&T's
10 Motion for Summary Judgment. Fed. R. Evid. 401, 402.

11 Objection to Terpin Declaration ¶¶ 2-3 on the grounds that any purported statements
12 made by an employee to Terpin are inadmissible hearsay as there is no indication as to
13 whether the employee was an AT&T employee or otherwise authorized to speak on
14 AT&T's behalf. Fed. R. Evid. 801, 802. Further, the assertion that AT&T made legally
15 enforceable "promises" is a legal conclusion and argument—not a fact—and is an
16 improper opinion. Fed. R. Evid. 401, 402, 701,702.

17
18 **Additional Fact No. 43:** Objection to Terpin Declaration ¶ 4 on the grounds that any
19 purported statements made by an employee to Terpin are inadmissible hearsay as there
20 is no indication as to whether the employee was an AT&T employee or otherwise
21 authorized to speak on AT&T's behalf. Fed. R. Evid. 801, 802. This defect also means
22 there is a lack of foundation regarding any allegation of what the "extra" security did or
23 did not provide. Fed. R. Evid. 602. Regardless, the issue of Terpin's "extra" protection
24 is irrelevant to the issues set forth in AT&T's Motion for Summary judgment. Fed. R.
25 Evid. 401, 402.

26 **Additional Fact No. 44:** Objection to this fact on the grounds that the phrase
27 "[c]onsistent with and echoing statements made by AT&T" is inadmissible hearsay as
28

1 there is no indication as to whether the employee was an AT&T employee or otherwise
 2 authorized to speak on AT&T's behalf. Fed. R. Evid. 801, 802. This defect also means
 3 there is a lack of foundation for any claims as to what the "extra" security did nor did
 4 not provide. Fed. R. Evid. 602.

5 **Additional Fact No. 45:** Objection to the purported fact on the grounds that an assertion
 6 regarding what was foreseeable to AT&T as of June 11, 2017 and January 7, 2018 is a
 7 legal conclusion, argument, and improper opinion. Fed. R. Evid. 401, 402, 701, 702.
 8 This defect also means there is a lack of foundation for any claims as to what was
 9 "foreseeable to AT&T." Fed. R. Evid. 602. Additionally, whether it was foreseeable that
 10 unauthorized SIM swaps could financially harm customers is not relevant because it
 11 does not have a tendency to disprove the arguments set forth in AT&T's Motion for
 12 Summary Judgment. Fed. R. Evid. 401, 402.

13
 14 **Additional Fact No. 51:** Objection to the purported fact on the grounds that it is a legal
 15 conclusion as to what "AT&T knew or should have known before June 7, 2016" and is
 16 argument—not a fact. Fed. R. Evid. 401, 402, 701, 702. The purported fact also lacks
 17 foundation as to AT&T's knowledge. Fed. R. Evid. 602. Accordingly, the purported fact
 18 is also improper opinion evidence. Fed. R. Evid. 701, 702.

19 Objection to Exhibit 10 as hearsay to the extent it is being used for the truth of the matter
 20 asserted—i.e., that there was a SIM swapping scam that tricked customers into providing
 21 the last four numbers of their SSNs so that an "impersonator" could engage in a SIM
 22 swap. Fed. R. Evid. 802. To the extent that Plaintiff suggests that it is excluded from the
 23 hearsay rule as a public record, the NPR does not meet the criteria of Fed. R. Evid.
 24 803(8)(A).

25
 26 **Additional Fact No. 52:** Objection to the purported fact on the grounds that it is a legal
 27 conclusion as to what "AT&T knew or should have known" about the FTC's blog post
 28

1 and is argument—not a fact. Fed. R. Evid. 401, 402, 701, 702. The purported fact also
2 lacks foundation as to AT&T’s knowledge. Fed. R. Evid. 602. Accordingly, the
3 purported fact is also improper opinion evidence. Fed. R. Evid. 701, 702.

4 Objection to Exhibit 8 as hearsay to the extent it is being used for the truth of the matter
5 asserted—i.e., that there was a SIM swapping scam that tricked customers into providing
6 the last four numbers of their SSNs so that “phones could be hijacked by an identity
7 theft” to steal financial assets. Fed. R. Evid. 802. To the extent that Plaintiff suggests
8 that it is excluded from the hearsay rule as a public record, the NPR does not meet the
9 criteria of Fed. R. Evid. 803(8)(A).

10
11 **Additional Fact No. 53:** Objection to the purported fact on the grounds that it is a legal
12 conclusion as to what “AT&T knew or should have known” about various news articles
13 prior to January 7, 2018 and is argument—not a fact. Fed. R. Evid. 401, 402, 701, 702.
14 The purported fact also lacks foundation as to AT&T’s knowledge. Fed. R. Evid. 602.
15 Accordingly, the purported fact is also improper opinion evidence. Fed. R. Evid. 701,
16 702.

17 Objection to Exhibit 11 as hearsay to the extent it is being used for the truth of the matter
18 asserted—i.e., that SIM swaps have, in fact, been used to steal cryptocurrency. Fed. R.
19 Evid. 802.

20
21 Objection to Exhibit 12 as hearsay to the extent it is being used for the truth of the matter
22 asserted—i.e., that SIM swaps have, in fact, been used to steal cryptocurrency. Fed. R.
23 Evid. 802.

24 **Additional Fact No. 54:** Objection to the purported fact on the grounds that it is a legal
25 conclusion as to what “AT&T knew or should have known” about the December 12,
26 2016 article in *Forbes* and is argument—not a fact. Fed. R. Evid. 401, 402, 701, 702.
27 The purported fact also lacks foundation as to AT&T’s knowledge. Fed. R. Evid. 602.
28

1 Accordingly, the purported fact is also improper opinion evidence. Fed. R. Evid. 701,
2 702.

3 Objection to Exhibit 12 as hearsay to the extent it is being used for the truth of the matter
4 asserted—i.e., “[h]ackers have stolen millions of dollars in Bitcoin—using only phone
5 numbers,” and that there was a “spate of recent hackings” Fed. R. Evid. 802.
6

7 **Additional Fact No. 55:** Objection to the purported fact on the grounds that it is a legal
8 conclusion as to what “AT&T knew or should have known” about the December 12,
9 2016 article in *Forbes* and is argument. Fed. R. Evid. 401, 402. The purported fact also
10 lacks foundation as to AT&T’s knowledge. Fed. R. Evid. 602. Accordingly, the
11 purported fact is also improper opinion evidence. Fed. R. Evid. 701, 702.

12 Objection to Exhibit 12 as hearsay to the extent it is being used for the truth of the matter
13 asserted—i.e., “[h]ackers have stolen millions of dollars in Bitcoin—using only phone
14 numbers,” and that there was a “spate of recent hackings” Fed. R. Evid. 802.
15

16 **Additional Fact No. 56:** Objection to the purported fact on the grounds that it is a legal
17 conclusion as to what “AT&T knew or should have known” regarding statements made
18 by the CEO of a U.S.-based cryptocurrency exchange in the referenced *Forbes* article
19 and is argument—not a fact. Fed. R. Evid. 401, 402, 701, 702. The purported fact also
20 lacks foundation as to AT&T’s knowledge. Fed. R. Evid. 602. Accordingly, the
21 purported fact is also improper opinion evidence. Fed. R. Evid. 701, 702.

22 Objection to Exhibit 12 as hearsay to the extent it is being used for the truth of the matter
23 asserted—i.e., that it is the elcos’ fault “for not safekeeping phone numbers even though
24 they are a linchpin in security”; that telephone numbers are not treated “like a bank
25 account” but should be; and that telcos “prioritized convenience above else.” Fed. R.
26 Evid. 802. These statements also are legal conclusions, lack foundation as to what telcos
27 believed, and are improper opinions. Fed. R. Evid. 401, 402, 602, 701, 702.
28

1 **Additional Fact No. 57:** Objection to Exhibit 11 as hearsay to the extent it is being used
 2 for the truth of the matter asserted—i.e., that the number of unauthorized SIM swaps
 3 had increased since the *Forbes* article. Fed. R. Evid. 802.

4 **Additional Fact No. 60:** Objection to Exhibit 36 as hearsay to the extent it is being used
 5 for the truth of the matter asserted—i.e., that “[t]elecommunications providers . . . have
 6 been aware for over ten years that unauthorized third parties regularly attempt to obtain
 7 access to customer subscriber accounts to gain control over a customer’s SIM card.”
 8 Fed. R. Evid. 802. Additionally, the statements in the article lack foundation as to
 9 telecommunications providers’ knowledge. Fed. R. Evid. 602.

10
 11 **Additional Fact No. 80:** Objection to Exhibit 48 as hearsay to the extent that it is being
 12 used for the truth of the matters asserted—i.e., that Cryptocurrency has “joined the global
 13 financial system” in 2017. Fed. R. Evid. 802.

14 **Additional Fact No. 82:** Objection to the Deposition of Ellis Pinsky at 66:23-67:3 as
 15 hearsay to the extent that it is being used for the truth of the matters asserted—i.e., the
 16 comments allegedly made to him by the identified third parties. Fed. R. Evid. 802.

17
 18 **Additional Fact No. 84:** Objection to the Deposition of Ellis Pinsky at 80:16-23 as
 19 hearsay and for lack of foundation to the extent that it is being used for the truth of the
 20 matters asserted—i.e., the comments regarding the people with whom he allegedly
 21 shared information. Fed. R. Evid. 802.

22 **Additional Fact No. 86:** Objection to the purported fact on the grounds that it is a legal
 23 conclusion as to what “AT&T knew or should have known” regarding Jahmil Smith’s
 24 other SIM swaps and it is argument—not a fact. Fed. R. Evid. 401, 402, 701, 702.
 25 Additionally, the purported fact includes both speculation and a legal conclusion that
 26 AT&T could have taken actions “to prevent Smith from conducting the January 7, 2018
 27 unauthorized SIM swap of Mr. Terpin’s account.” Fed. R. Evid. 401, 402. The purported
 28

1 fact also lacks foundation as to AT&T's knowledge and the assertion that AT&T "did
2 nothing." Fed. R. Evid. 602. Accordingly, the purported fact is also improper opinion.
3 Fed. R. Evid. 701, 702.

4 **Additional Fact No. 93:** Objection to the purported fact on the grounds that the
5 statement that the Prior Smith SIM Swaps "foreshadow[ed]" the January 7, 2018 SIM
6 swap is a legal conclusion, improper opinion and argument—not a fact. Fed. R. Evid.
7 401, 402, 701, 702.
8

9 **Additional Fact No. 96:** Objection to the purported fact on the grounds that the assertion
10 that AT&T "did not have or did not follow reasonable policies" is a legal conclusion,
11 improper opinion, and argument—not a fact—and lacks foundation. Fed. R. Evid. 401,
12 402, 602, 701, 702.

13 **Additional Fact No. 97:** Objection to the purported fact on the grounds that the assertion
14 that AT&T did not conduct the investigation because "of the decision that AT&T
15 allowed the customer care representative to make" is a legal conclusion, improper
16 opinion, and argument—not a fact—and lacks foundation. Fed. R. Evid. 401, 402, 602,
17 701, 702.
18

19 **Additional Fact No. 98:** Objection to the purported fact on the grounds that the assertion
20 that "[h]ad AT&T performed proper procedures . . . it would not have allowed Smith to
21 continue work" is a legal conclusion. Fed. R. Evid. 401, 402, 701, 702. Additionally, the
22 statement is argument, improper opinion, and lacks foundation as to whether AT&T
23 even had the ability to not allow Smith to work, that AT&T had access to basic
24 information about the Prior Smith SIM Swaps that was readily available, and that AT&T
25 did not perform proper procedures. Fed. R. Evid. 401, 402, 602, 701, 702.

26 **Additional Fact No. 102:** Objection to the AT&T Morella Deposition at 102:12-103:4
27 on the grounds that the testimony is not relevant in that the improper hypothetical
28

1 questions invite speculation. Fed. R. Evid. 402, 403. Additionally, because of the
 2 hypothetical nature of the questions, the testimony lacks foundation. Fed. R. Evid. 602.
 3 Additionally, these statements are improper opinion evidence as to what AT&T's
 4 customers' general knowledge and practices were. Fed. R. Evid. 701.

5 **Additional Fact No. 103:** Objection to the AT&T Morella Deposition at 102:12-103:4
 6 and 176:17-177:8 on the grounds that the testimony is not relevant in that the improper
 7 hypothetical questions invite speculation. Fed. R. Evid. 401, 402, 403. Additionally,
 8 because of the hypothetical nature of the questions, the testimony lacks foundation. Fed.
 9 R. Evid. 602.

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 11 **Additional Fact No. 106:** Objection to the AT&T Morella Deposition at 108:8-15 on
 12 the grounds that the testimony is not relevant in that the improper hypothetical question
 13 as to what the witness "would . . . have wanted" under the posited circumstances invites
 14 speculation. Fed. R. Evid. 401, 402, 403. Additionally, because of the hypothetical
 15 nature of the questions, the testimony lacks foundation. Fed. R. Evid. 602.

16 **Additional Fact No. 107:** Objection to the AT&T Morella Deposition at 108:17-109:25
 17 on the grounds that the testimony is not relevant in that the improper hypothetical
 18 question as to the witness's view regarding a hypothetical situation invites speculation
 19 and that there is no foundation for the witness to speculate on these issues. Fed. R. Evid.
 20 401, 402, 403, 602.

21
 22 **Additional Fact No. 109:** Objection to the AT&T Morella Deposition at 127:19-25 on
 23 the grounds that the witness lacks personal knowledge as to what information Spring
 24 may or may not have had. Fed. R. Evid. 602.

25 **Additional Fact No. 110:** Objection to the Prime/Milberger Deposition v.1 at 140:18-
 26 141:23 on the grounds that there is no foundation or basis for the corporate designee of
 27 Prime to have knowledge about what Spring did or did not know about the Prior Smith
 28

1 SIM Swaps. Fed. R. Evid. 602. Further, what other companies knew (or did not know)
2 about the Prior Smith SIM Swaps is not relevant in that it does not have a tendency to
3 prove anything with regard to the issues set forth in AT&T's Motion for Summary
4 Judgment. Fed. R. Evid. 401, 402.

5 **Additional Fact No. 112:** Objection to the AT&T Morella Deposition at 110:2-13 on
6 the lack of foundation grounds in that the witness lacks personal knowledge and there is
7 a lack of foundation regarding whether AT&T was provided with any explanation
8 exonerating Smith with regard to Smith's involvement in the Prior Smith SIM Swaps.
9 Fed. R. Evid. 602.

10
11 **Additional Fact No. 113:** Objection to the Prime/Milberger Deposition v.1 at 147:3-9
12 on the grounds that there is no factual basis for the witness, who is not a Spring
13 employee, to have knowledge of whether or not Smith was reprimanded by Spring for
14 his involvement in the Prior Smith SIM Swaps. Fed. R. Evid. 602.

15 **Additional Fact No. 126:** Objection to the Prime/Milberger Deposition v.2 at 197:2-17
16 on the grounds that there is no factual basis for the witness, who is not a Spring
17 employee, to have knowledge of whether or not Smith was reprimanded by Spring for
18 his involvement in the Prior Smith SIM Swaps. Fed. R. Evid. 602.

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20 **Additional Fact No. 142:** Objection to this purported fact on the grounds that the
21 assertion that the alleged delay in transferring Terpin's phone number back provided
22 additional time for hackers to access his accounts is an improper opinion. Fed. R. Evid.
23 701, 702. And because the purported fact does not accurately reflect those statements
24 made in the cited evidence, it lacks adequate foundation. Fed. R. Evid. 602.

25 **Additional Fact No. 164:** Objection the Deposition of Ellis Pinsky at 18:8-15 on the
26 grounds that the statements regarding the value of the cryptocurrency lack foundation.
27 Fed. R. Evid. 602.
28

1 **Additional Fact No. 169:** Objection to the Deposition of Ellis Pinsky at 132:13-17 on
2 the grounds that his claim that if the Terpin swap had been reversed within 20 to 25
3 minutes, Pinsky would not have been able to get into the Microsoft account is
4 speculation—not a fact—and lacks foundation. Fed. R. Evid. 401, 402, 403 602.

5 **Additional Fact No. 172:** Objection to the purported fact on the grounds that the
6 assertion that “the perpetrators gained access to Terpin’s mobile account” because of
7 “the actions of Smith” is a legal conclusion and argument—not a fact. Fed. R. Evid. 401,
8 402, 701, 702.
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12 Dated: February 13, 2023

Respectfully submitted,

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14
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